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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,473	01/12/2007	Werner Blohmann	BLOH3001/FJD	6947
23364	7590	01/08/2008	EXAMINER	
BACON & THOMAS, PLLC			QUINN, RICHALE LEE	
625 SLATERS LANE				
FOURTH FLOOR			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			3765	
			MAIL DATE	DELIVERY MODE
			01/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/579,473	BLOHMANN, WERNER
	Examiner	Art Unit
	Richale L. Haney Quinn	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 January 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 11-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 11-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 12 January 2007 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>5/15/2006</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 35. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11 – 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan et al (US 5,379,462). The device of Morgan et al. discloses an men's boxer shorts garment comprising a front part (A, B), a back (C) part, an insert (D) part; a

crotch area (38), a waistband (46) having a longitudinal center (at 63) extending along said front part and said back part wherein the front part is provided on the inside with said insert part (D) extending to both sides of the longitudinal center. The insert has two free edges (n, e and j, i) each extending away from the longitudinal center (Figure 3) and the two free edges are joined together in a securing point at the longitudinally extending crotch inseam (38) by the lower region of the crotch insert part forming a cup like receptacle in a longitudinal section. The insert is connected to the waistband (46) at each of the upper ends of the free edges (Column 2, lines 64 - 65) and is constructed of two identical pieces (n, m, e, f and k, j, h, i) and are disposed symmetrically to the longitudinal center (Column 2, lines 53 – 60) so that each insert piece, remote from its free edge is secured to said front part near the longitudinal center thereof (Figure 3). The front and back part are in a one piece (Figure 1), in as much as shown and disclosed by applicant, and the back part has a gore (C) extending from the waistband to the crotch area.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan et al. in view of Gwinn (US 5,718,003). The device of Morgan et al. substantially

discloses the claimed invention but is lacking a button trip at the fly. The device of Gwinn discloses a boxer short garment for supporting the male genitals having a concealed fly which is provided with a button strip (Figure 1, 8 and 9). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the device of Morgan et al. by utilizing the button strip of Gwinn in order to provide a means for fastening the boxer shorts and keep them from falling down (Column 2, lines 32 – 33).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
7. Melze (US 925,121), Fiesh (US 2,058,970), Mann (US 3,459,181), Scheerer (US 3,499,443), Dietz (US 4,141,357), Zhang (US 5,070,869), Plunkett (US 5,524,298), Soderstrom (US 7,178,174) and Kang (US 2007/0245463)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Quinn whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L Quinn
Examiner
Art Unit 3765

RLQ
1/5/2008


GARY L. WELCH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700